HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9035 OF 2005.

1. Bharti Telventures Limited.
2. Sunil Bharti Mittal. ..Petitioners.

Versus.

1. The Chief Controlling Revenue Authority, Maharashtra State, Pune.

2. State of Maharashtra. ..Respondents.

Shri.F. Divetri, senior counsel with Faran Dubhash with Prasad Dhande i/b D.H.Law Associates for the Petitioners.

Smt. Vaidehi S. Mhaispurkar, A.G.P. for the respondent No.2.

CORAM: S.B.MHASE, J.

DATE : MARCH 29, 2006.

Oral Judgment:

1. Rule returnable forthwith.

2. This petition is directed against the order dated 29th October 2005 passed by the Chief Controlling Revenue Authority, Maharashtra State, Pune in Appeal No. 52 of 2005 wherein the present petitioner was the appellant. The said appeal was preferred by the petitioner being aggrieved by the order dated 22nd June 2005 passed by the Lower

Authority in impounding proceeding bearing Case No. 7254 of 2005 wherein the appellants were directed to pay deficit stamp duty of Rs.7,73,85,863/- and penalty of Rs. 4,38,36,226/- making a total to Rs.12,12,22,080/-.

3. The appellant was/is a licensee under section 4 of the Indian Telegraph Act, 1885 to set up and operate cellular mobile telephone services in the Mumbai circle. As part of the required infrastructure, the appellant was required to place and has placed various cellular telecommunication equipments/ antennae on the roof tops of and other suitable locations on various buildings and sites in its area of operation. The petitioner as a licensee has been authorised to arrive at an arrangement for "way-leave" including for the use of parts of buildings. Accordingly, the petitioner has entered into agreements with the owners of the buildings including the co-operative societies and others, in regard to the placement of the said equipments on the buildings in the city of Mumbai. These equipments generally consist of a pre-fabricated temporary PVC cabin housing the controls and other equipments and metal poles on which various required antennae and wiring were attached. These agreements were on stamp

papers of Rs.20/-.

. The Lower Authority called the information in respect of those agreements from the petitioner and after having perused those agreements, by a letter dated January 7, 2005 intimated that these agreements are chargeable under Article 36 of the Bombay Stamp Act, 1958 (hereinafter in short referred to as "the said Act.") as a lease and directed to deposit the deficit stamp duty and penalty as stated above.

4. Since this was done without giving an opportunity to the petitioner, the petitioner had approached to this Court by filing a Writ Petition No. 176 of 2005. The said writ petition was allowed with direction to the Superintendent of Stamps to pass the reasoned order after giving an opportunity to the petitioner. Accordingly, the petitioner was heard and thereafter the Superintendent of Stamps has passed the order on June 22, 2005 imposing the same amount of penalty classifying those agreements as leases chargeable under Article 36 of the said Act. In appeal before the Chief Controlling Revenue Authority the stand taken by the petitioner was that those agreements were/are not leases and therefore cannot be charged under Article 36 of the said Act and

therefore, the deficit stamp duty and penalty imposed was/is improper and be set aside. The appellate authority accepted the submissions of the petitioner and recorded a finding that the agreements in question are not leases to be charged under Article 36 of the Schedule-I of the said Act. However, further classified those agreements as falling under Article 36A of the said Act. Thus, classifying those agreements as leave and licence agreements the appellate authority imposed the stamp duty and penalty. Being aggrieved by that order, the present writ petition has been filed.

5. Learned counsel appearing on behalf of the petitioner submitted that earlier the decision to classify those agreements as a lease was taken without notice to the petitioner, therefore the petitioner had approached to this Court, whereupon this Court had directed to give an opportunity to the petitioner and decide the nature of the agreements. Even though the appellate authority has agreed with the petitioner that those agreements are not leases but the grievance of the petitioner is that surprisingly the appellate authority has come to the conclusion that those agreements are the "leave and licence" agreements and are chargeable under Article -36A of the said Act.

Learned counsel for the petitioner submits that this finding recorded by the appellate authority is without any notice to the petitioner. The petitioners were not aware of the fact that the appellate authority is going to consider those documents as a leave and licence agreements covered under Article 36-A of the said Act. The learned counsel for the petitioner submitted that had it been brought to the notice of the petitioner that those documents were going to be classified as leave and licence he would have satisfied the appellate authority that Article 36-A would not be applicable to the agreements in question. This Court notices that this finding has been arrived at by the appellate authority without notice to the petitioners. Therefore, this Court asked the learned A.G.P. for the State as to whether the appellate authority is ready and willing to hear the petitioners on a point as to whether those agreements are to be classified as leave and licence agreements chargeable under Article 36-A of the said Act. Now, the learned A.G.P. for the respondent - State has given a concession to set aside that part of the impugned order.

6. In view of the facts and circumstances and the concessions given by the learned A.G.P. for the

State, the order dated 29.10.2005 is confirmed to the extent that the agreements in question are not chargeable under Article 36 of the said Act, however, the order of the appellate authority to the effect that those agreements are chargeable under article 36-A of the said Act and imposing the penalty and asking the petitioner to pay the deficit court fee is hereby quashed and set aside. The matter is remitted to the appellate authority to consider as to whether the agreements in question are chargeable under Article 36-A of the said Act, after giving hearing opportunity to the petitioners. After remand, the matter shall be disposed of by the Appellate Authority within a period of eight weeks from the date of receipt of the copy of this order. Rule is made absolute accordingly.

(S.B.MHASE, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No. 9035 OF 2005.

DATE OF DECISION: March 29, 2006.

For approval and signature

THE HON'BLE SHRI. JUSTICE S.B.MHASE.

1. Whether reporters of Local Papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether His Lordship wishes to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur & Aurangabad office ?

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